APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,208	12/19/2000	David P. Henzerling	42390P10397	7691

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EXAMINER
HESS, DANIEL A

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/741,208	HENZERLING, DAVID P.7
	Examiner	Art Unit	
	Daniel A Hess	2876	*(handwritten: Ar)*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 October 2004*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 6-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4 and 6-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 1-04)   Office Action Summary.   Part of Paper No./Mail Date 111904

DETAILED ACTION

This action is in response to amendment of 10/13/2004, which has been placed in the file of
record.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

Claims 1, 2, 6-8, 11, 14-17 and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over well-known applications of Microsoft Windows 95™ networking, in view of

wireless LANs, as exemplified by Stewart (US 5,633,888).

Re claims 1, 8, 11, 14-17: The common configuration of two computers exchanging data

on a local area network (LAN) meets the definition of peer-to-peer communication. Thus, for

example, one may have two PCs connected together on a local network wireless network using,

for example, Windows™ networking. Each PC can be a music player, capable of playing music

files. One can directly receive a file from a remote device without prior knowledge of whether

that file exists on the hard drive of that second computer by, for example, using Windows™

networking to perform a hard drive search for a particular file on a hard drive that is physically

located on the other PC. Then, if the file turns up, one can save it onto a local hard drive.

Wireless LANs were taught by Stewart and hundreds of others prior to the invention by the

Applicant.

In summary, two wirelessly networked PCs had, at the time of the invention, capability to

enable all of the claimed limitations. The Examiner further takes Office Notice that as early as

spring of 1997, while a college student using a dorm-room LAN, he obtained MP3 music files in

a peer-to-peer way with others on the local network.

The motive to do this was to have greater access to music beyond those files one has

stored locally.

Re claim 2: This corresponds to the hard drive of a PC.

Re claims 6, 7: Consider wirelessly networked laptop PCs: these could go anywhere

(provided they are within communicating range), including in a car. Some wireless systems have

very large ranges.

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Windows 95™ as modified by Stewart as applied to claim 1 above, in view of Jigour et al. (Us

5,877,975).

Windows 95™ as modified by Stewart as applied to claim 1 above fails to teach the use

of flash memory.

Jigour et al. teaches (throughout) the use of flash memory units which can plug into a PC.

In view of Jigour et al's teaching, it would have been obvious to one of ordinary skill in

the art at the time the invention was made to store a music file the old and well-known flash

memory of Jigour et al. because this could make such files available to, for example, a portable mp3 player.

Claims 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1 above in view of van Zoest et al. (US 6,496,802).

Re claim 4: Windows 95™ as modified by Stewart as applied to claim 1 above fails to teach or fairly suggest uploading a music file to an Internet service provider.

Van Zoest et al. teaching (entire document ; especially column 1 ; column 15, line 9) uploading mp3s to and downloading from an Internet service provider.

In view of van Zoest et al.'s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known uploading of files to an ISP because can make them available for access later or at another computer or networked device.

Re claims 18 and 19: See discussion re claim 4 and note that van Zoest et al.'s system is indeed a database for which there is access to files going both ways (download and upload). If a user accesses van Zoest et al.'s system via a wireless LAN, the claim limitations are met.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1, in view of Tosaya (US 6,323,893).

Windows 95™ as modified by Stewart as applied to claim 1 fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1, in view of and further in view of Segal et al. (US 6,167,251).

Windows 95™ as modified by Stewart as applied to claim 1 fails to fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Stewart as applied to claim 1 above, in view of Dutta et al. (US 6,636,854).

Windows 95™ as modified by Stewart as applied to claim 1 fails to enable the type of peer-to-peer communication embodied in claims 21-25.

Dutta et al. (see especially column 5, line 15 to column 6, line 35) describes the various aspects of 'Gnutella,' a peer-to-peer file sharing system having all of the peer-to-peer aspects recited in claims 21-25.

In view of Dutta et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to run the old and well-known 'Gnutella' software on the wireless LAN of Windows 95™ as modified by Stewart as applied to claim 1, because this gives a user at a particular device access to more music files than they otherwise would have.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft Windows Networking™ in view of Dutta et al. as applied to claims 21-25 above, in view of Tosaya.

Arguments are similar to those re claim 9 above, whose limitations are similar.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft Windows Networking™ in view of Dutta et al. as applied to claims 21-25 above, in view of Segal.

Arguments are similar to those re claim 9 above, whose limitations are similar.

Response to Arguments

The applicant's argument seems to center around two points, namely:

(a) the Fanning / Napster network does not represent a true peer-to-peer network because a server system is involved, and

(b) as amended, a music file is requested without prior knowledge of whether it exists on a remote device.

The Examiner notes that a number of definitions of peer-to-peer exist; however, since the applicant has clearly limited the definition of peer-to-peer, that more limited definition will be employed. The limited definition of the Applicant, particularly as per pages 12 and 13 of the 10/13/2004 response includes the notion that *one device can access the files on another device directly, without the involvement of a third serving device.*

To repeat the arguments above, the common configuration of two computers exchanging data on a local area network (LAN) meets the definition of peer-to-peer communication. Thus, for example, one may have two PCs connected together on a local network wireless network using, for example, Windows™ networking. Each PC can be a music player, capable of playing music files. One can directly receive a file from a remote device without prior knowledge of whether that file exists on the hard drive of that second computer by, for example, using Windows™ networking to perform a hard drive search for a particular file on a hard drive that is physically located on the other PC. Then, if the file turns up, one can save it onto a local hard drive.

A search at http://www.google.com for the definition of 'peer-to-peer' performed on

11/20/2004 reveals all of the following (note especially the last of these, which support the

Examiner's above arguments by specifically discussing peer-to-peer as it relates to Windows

95):

Definitions of **Peer-to-Peer** on the Web:

Peer-to-peer is a communication model in which computing devices—desktops, servers, and other smart devices—link directly to each other. This can include smart client to smart client, smart client to smart server, and smart server to smart server connections. Microsoft .NET supports peer-to-peer as one of the manifestations of distributed computing.

www.microsoft.com/net/basics/glossary.asp

A network setup that allows every computer to both offer and access network resources, such as shared files, without requiring a centralized file server. Macintosh computers utilize this type of network setup.

www-rohan.sdsu.edu/glossary3.html

A type of connection between two computers; both perform computations, store data, and make requests from each other (unlike a client-server connection where one computer makes a request and the other computer responds with information).

www.oit.ohio-state.edu/glossary/gloss3.html

In a peer-to-peer architecture, two or more nodes can directly initiate communication with each other; they do not need an intermediary. A device can be both the client and the server.

www.networkbuyersguide.com/search/105490.htm

Communication between two network devices that have the same status on the network.

www.liebert.com/support/glossary/net_gloss.asp

Networking where stations are equivalent; any station can make any of its resources available to any/all other stations. Examples of Peer-to-Peer networks are Acorn Access+ and Windows for Workgroups(r). If the software controlling the Peer-to-Peer networking is readily available and users enjoy 'experimenting' then managing a Peer-to-Peer network can be very difficult! Compare Server-Client.

www.i-cubed.co.uk/glossary.html

Peer-to-peer is a communication model in which computing devices--desktops, servers, and other smart devices--link directly to each other. This can include smart client to smart client, smart client to smart server, and smart server to smart server connections. Microsoft .NET supports peer-to-peer as one of the manifestations of distributed computing.

docs.msdnaa.net/ark/Webfiles/glossary.htm

Peer-to-peer is a communication model in which each party has the same capabilities and either party can initiate a communication session.

eu.computers.toshiba-europe.com/cgi-bin/ToshibaCSG/glossary_teaser.jsp

A networking strategy where the different computers in a network are considered to be equal. Instead of a central server providing services for clients on the network, each computer on the network can make its resources available to others, and use resources which others have made available. A contrasting strategy is client-server.

associate.com/camsoc/ctt/gloss-p.html

Form of cooperative processing in which either of the programs involved can initiate communication with the other. In a peer network, every station can function as both a client and a server.

www.mof.gov.il/micun/gloss2.htm

A control strategy in which independent intelligent devices share information directly with each other and make their own control decisions without the need or delay of using an intermediate, central or master controller. Because of the enhanced system reliability introduced by eliminating the master (a single point of failure) and the reduced installation and configuration cost inherent in peer-to-peer designs, LonWorks networks often use a peer-to-peer control strategy.

www.echelon.com/support/KnowledgeDB/FAQ_Glossary/glossary4.htm

Computer-based communications in which both computers have equal responsibility for initiating, maintaining and terminating the session. Napster and other file-sharing programs have popularized peer-to-peer communications.

www.championventures.com/glossary2.htm

P-t-P configurations are typical to ad hoc networks. They involve at least two wireless nodes setting up an independent network (as long as they're in communicating distance from each other).

www.envara.com/glossary.html

Refers to a network topology where devices communicate directly with each other rather than according to a client server architecture. Resource sharing under Windows95 is an example of peer to peer networking.

www.kwhw.co.uk/glossary.htm

A type of direct communication between two devices on the same communications level of a network without intervention by any intermediary devices (such as a host or server).

www.vpsi.com/Site/05_terms_defs.htm

A system in which two or more nodes or processes can initiate communications with each other. Usually describes a network in which all nodes have the ability to share resources with other nodes so that a dedicated server can be implemented but is not required.

www.connectworld.net/iec/Browse02/GLSP.html

A type of communication in which any two devices can communicate on an equivalent basis. A peer-to-peer architecture is a LAN option that allows nodes to communicate on

an equal basis and share resources (as opposed to a server-based LAN).
www.prenhall.com/divisions/bp/app/stamper/bdc/student/glossary3.html

A balanced relationship between two products, neither one is more capable or can control the other.
www.sync.com/support/glossary_n_s.htm

– like superdistribution without the initial B.
www.giantstepsmts.com/old/drm_glossary.htm

A type of network which allows small groups of computers to share resources without a central server
www.sunyrockland.edu/~laaron/Win95/win-glossary.html

Term used for point-to-point communications between two client systems without use of a central server
www.multiplan.co.uk/company/glossary.html

A computer networking arrangement where there is no central computer (or server) and all the linked computers are treated equally. All the computers can share printers, CD-ROM drives, and other peripherals and access files stored on all the computers on the network.
www.computersandinternet.com/Dictionary/Terms-P.htm

A model or paradigm on which some network communications and applications are based. In a peer-to-peer environment, each networked host runs both the client and server parts of an application.
www.cse.iitb.ac.in/~paraga/books/1555582141/glossary.html

— A type of networking in which each computer can be a client to other computers and act as a server as well.
intranet.sgc.edu/people/staff/jeburdette/courses/Networking/glossary.htm

A type of network setup in which there is no server. Each workstation shares resources with other workstation. The machine with the shared drive should be beefed up like a server. Peer-To-Peer installations should not exceed 5 users. A Peer-To-Peer network can be created with Windows NT Workstation, Windows 98, or Windows 95.
alphadatasystems.com/Glossary_Network_Bottom.html

Regarding arguments of a 'true' peer-to-peer network, the applicant appears to be favor a definition along the lines of 'Gnutella' as described in Dutta et al. (US 6,636,854), especially columns 5 and 6. Such software predates the invention by the Applicant and it is believed by the Examiner that running such software on a wireless LAN would have been obvious.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DH

DANIEL STCYR
PRIMARY EXAMINER